

AMENDED IN SENATE AUGUST 6, 2012

AMENDED IN SENATE JUNE 12, 2012

AMENDED IN ASSEMBLY MAY 1, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2118**

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**Introduced by Assembly Member Butler**

February 23, 2012

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An act to amend Sections 5109, 5133, *5139*, *5142*, *5143*, 5311, 5314.5, 5315, and 5322 of, and to add Sections 5110.7, ~~5139.1~~, 5144, and 5314.7 to, the Public Utilities Code, relating to household goods carriers.

LEGISLATIVE COUNSEL'S DIGEST

AB 2118, as amended, Butler. Household goods carriers.

(1) Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including transportation companies. Under existing law, the Household Goods Carriers Act, household goods carriers, as defined, are subject to the jurisdiction and control of the commission. The act prohibits a household goods carrier from engaging, or attempting to engage, in the business of the transportation of used household goods and personal effects, by motor vehicle over any public highway in the state, including advertising, soliciting, offering, or entering into an agreement, without a permit issued by the commission authorizing transportation entirely within the state, or a valid operating authority issued by the Federal Motor Carrier Safety Administration, for interstate transportation. The act declares that it is not to be construed as a regulation of interstate or foreign

commerce, except as permitted under the United States Constitution and the acts of Congress.

This bill would expand the definition of a household goods carrier to include a household goods carrier that engages in the ~~licensed~~ *permitted* or ~~unlicensed~~ *unpermitted* transportation for compensation or hire as a business by means of a motor vehicle or motor vehicles being used in the transportation of used household goods and personal effects over any public highway in this state. *The bill would require a broker, as defined, to be considered a household goods carrier.* The bill would additionally prohibit a household goods carrier from arranging, by any means or media, as a broker, ~~as defined,~~ for the transportation of used household goods and personal effects. The bill would require the commission to establish rules permitting electronic transactions, as specified *and would authorize specified documents to be in electronic form, if agreed upon by the carrier and the customer.* The bill would require a household goods carrier to add a prominent link to the carrier's Internet Web site that directs consumers to an Internet Web site hosted by the commission that promotes consumer rights and protection.

(2) Existing law requires telephone companies and related entities, as specified, upon demand and the order of a magistrate, to provide the commission, or an authorized official of the commission, access to the name and address of the subscriber to a telephone number being used by an unlicensed household goods carrier. Existing law prescribes the circumstances under which telephone corporations may release information regarding residential subscribers without their written consent.

This bill would require telephone companies, as prescribed, to provide this access to the commission as specified above, without the written consent of the subscriber.

(3) Under the act, every household goods carrier and every officer, director, agent, or employee of any household goods carrier who violates or who fails to comply with, or who procures, aids, or abets any violation by any household goods carrier of the act, or who fails to obey, observe, or comply with any order, decision, rule, regulation, direction, demand, or requirement of the commission, or of any operating permit issued to any household goods carrier, or who procures, aids, or abets any household goods carrier in its failure to obey, observe, or comply with any such order, decision, rule, regulation, direction, demand, requirement, or operating permit, is guilty of a misdemeanor, and if the

violation is not willful, is punishable by a fine of not more than \$1,000 or by imprisonment in the county jail, as prescribed, or both.

This bill would provide that the fine for this misdemeanor is instead not more than \$2,500. The bill would also provide that a fine shall be not less than \$1,000 for a violation involving operating or holding one's self as a household goods ~~Carrier~~ carrier without a permit.

~~The bill would state that a household goods carrier's unauthorized, unlicensed, or otherwise unlawful infringement of another corporation's or person's trademark, service mark, collective mark, certification mark, or trade name that has been registered, as specified, may be assessed a fine not to exceed \$2,500, as provided.~~

*This bill also would provide that a household goods carrier that falsifies permit status, membership in an association, or location is liable for a civil penalty of not more than \$2,500 per day of violation.*

Because a violation of the act or an order of the commission is a crime, this bill would impose a state-mandated local program by expanding the scope of a crime.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 5109 of the Public Utilities Code is  
2 amended to read:

3 5109. "Household goods carrier" includes every corporation  
4 or person, their lessees, trustee, receivers, or trustees appointed by  
5 any court whatsoever, engaged in the ~~licensed or unlicensed~~  
6 *permitted or unpermitted* transportation for compensation or hire  
7 as a business by means of a motor vehicle or motor vehicles being  
8 used in the transportation of used household goods and personal  
9 effects over any public highway in this state. *A broker, as defined*  
10 *in Section 5110.7, shall be considered a household goods carrier.*

11 SEC. 2. Section 5110.7 is added to the Public Utilities Code,  
12 to read:

1     5110.7. “Broker” means a person engaged by others in the act  
2 of arranging, for compensation, the intrastate transportation of  
3 used household goods by a motor vehicle over the highways of  
4 this state for, or on behalf of, a shipper, a consignor, or a consignee.

5     SEC. 3. Section 5133 of the Public Utilities Code is amended  
6 to read:

7     5133. (a) No household goods carrier shall engage, or attempt  
8 to engage, in the business of the transportation of used household  
9 goods and personal effects, by motor vehicle over any public  
10 highway in this state, including, by any means or media,  
11 advertising, soliciting, offering, arranging as a broker, or entering  
12 into an agreement regarding the transportation of used household  
13 goods and personal effects, unless both of the following are  
14 satisfied:

15     (1) For transportation of household goods and personal effects  
16 entirely within this state, there is in force a permit issued by the  
17 commission authorizing those operations.

18     (2) For transportation of household goods and personal effects  
19 from this state to another state or from another state to this state,  
20 there is in force a valid operating authority issued by the Federal  
21 Motor Carrier Safety Administration.

22     (b) A household goods carrier that engages, or attempts to  
23 engage, in the business of the transportation of used household  
24 goods and personal effects in violation of subdivision (a) may not  
25 enforce any security interest or bring or maintain any action in law  
26 or equity to recover any money or property or obtain any other  
27 relief from any consignor, consignee, or owner of household goods  
28 or personal effects in connection with an agreement to transport,  
29 or the transportation of, household goods and personal effects or  
30 any related services. A person who utilizes the services of a  
31 household goods carrier operating in violation of subdivision (a)  
32 may bring an action in any court of competent jurisdiction in this  
33 state to recover all compensation paid to that household goods  
34 carrier.

35     (c) The operation of a motor vehicle used in the business of  
36 transporting household goods and personal effects by a household  
37 goods carrier that does not possess a valid permit or operating  
38 authority, as required by subdivision (a), constitutes a public  
39 nuisance. Any peace officer, as defined in Chapter 4.5  
40 (commencing with Section 830) of Title 3 of Part 2 of the Penal

Code, may remove any motor vehicle located within the territorial limits in which the officer may act, when the vehicle is found upon a highway and is being used in a manner constituting a public nuisance. At the request of the commission, the Attorney General, district attorney, city attorney, or county counsel, the law enforcement agency may impound the vehicle for a period not to exceed 72 hours to enable the requesting agency to abate the public nuisance, to obtain an order from the superior court of the county in which the vehicle has been impounded to prevent the use of the motor vehicle in violation of law, and to obtain any other remedy available under law as permitted by Section 5316.

(d) Any person having possession or control of used household goods or personal effects, who knows, or through the exercise of reasonable care should know, that a household goods carrier transported those household goods or personal effects in violation of subdivision (a), shall release the household goods and personal effects to the consignor or consignee, as defined in Section 5142, upon the request of the consignor or consignee. If that person fails to release the household goods and personal effects, any peace officer, as defined in subdivision (c), may take custody of the household goods and personal effects and release them to the consignor or consignee.

~~SEC. 4. Section 5139.1 is added to the Public Utilities Code, to read:~~

~~5139.1. (a) The commission shall establish rules permitting electronic transactions, including electronic signatures and electronic transmission, completion, and execution of forms, contracts, and documents, with the rules requiring the carrier and shipper to agree in advance to the electronic transaction, the transaction meets verification, printing, and storage requirements adopted by the commission, and the electronic transaction otherwise conforms with this chapter, the commission's rules, and applicable law. For purposes of this section, "carrier" means the carrier whose Cal-T number is on the first shipping document presented to the shipper.~~

~~(b) Requirements pursuant to Sections 5142, 5143, 5221, 5223, 5224, and 5225 related to written forms and documents, information booklet, document storage, signatures, and the like may be satisfied by complying with the rules adopted by the commission pursuant to subdivision (a).~~

1     *SEC. 4. Section 5139 of the Public Utilities Code is amended*  
2     *to read:*

3     5139. (a) The commission may establish rules for the  
4     performance of any service of the character furnished or supplied  
5     by household goods carriers. Every household goods carrier shall  
6     observe ~~such~~ these rules. Failure to do so is unlawful.

7     (b) *No later than July 1, 2013, the commission shall establish*  
8     *rules to authorize an electronic form of documents required by*  
9     *this chapter, consistent with the purpose of the document and if*  
10    *the carrier and the customer agree to the use of an electronic form.*

11    *SEC. 5. Section 5142 of the Public Utilities Code is amended*  
12    *to read:*

13    5142. (a) Except as provided in Section 5133, a household  
14    goods carrier in compliance with this chapter has a lien on used  
15    household goods and personal effects to secure payment of the  
16    amount specified in subdivision (b) for transportation and  
17    additional services ordered by the consignor. ~~No A lien attaches~~  
18    ~~does not attach~~ to food, medicine, or medical devices, items used  
19    to treat or assist an individual with a disability, or items used for  
20    the care of a minor child.

21    (b) (1) The amount secured by the lien is the maximum total  
22    dollar amount for the transportation of the household goods and  
23    personal effects and any additional services (including any bona  
24    fide change order permitted under the commission's tariffs) that  
25    is set forth clearly and conspicuously in writing adjacent to the  
26    space reserved for the signature of the consignor and that is agreed  
27    to by the consignor before any goods or personal effects are moved  
28    from their location or any additional services are performed.

29    (2) The dollar amount for the transportation of household goods  
30    and personal effects and additional services may not be preprinted  
31    on any form, shall be just and reasonable, and shall be established  
32    in good faith by the household goods carrier based on the specific  
33    circumstances of the services to be performed.

34    (c) Upon tender to the household goods carrier of the amount  
35    specified in subdivision (b), the lien is extinguished, and the  
36    household goods carrier shall release all household goods and  
37    personal effects to the consignee.

38    (d) A household goods carrier may enforce the lien on household  
39    goods and personal effects provided in this section except as to  
40    any goods that the carrier voluntarily delivers or unjustifiably

1 refuses to deliver. The lien shall be enforced in the manner  
2 provided in this section and Chapter 6 (commencing with Section  
3 9601) of Division 9 of the Commercial Code for the enforcement  
4 of a security interest in consumer goods in a consumer transaction.  
5 To the extent of any conflict between this section and that Chapter  
6 6, this section shall prevail. Every act required in connection with  
7 enforcing the lien shall be performed in good faith and in a  
8 commercially reasonable manner.

9 (e) The household goods carrier shall provide a notification of  
10 disposition at least 30 days prior to any disposition to each  
11 consignor and consignee by personal delivery, or in the alternative,  
12 by first-class and certified mail, postage prepaid and return receipt  
13 requested, at the address last known by the carrier and at the  
14 destination address, and by electronic mail if an electronic mail  
15 address is known to the carrier. If any of the required recipients  
16 of notice are married to each other, and according to the carrier's  
17 records, reside at the same address, one notice addressed to both  
18 shall be sufficient. Within 14 days after a disposition, the carrier  
19 shall provide to the consignors any surplus funds from the  
20 disposition and an accounting, without charge, of the proceeds of  
21 the disposition.

22 (f) Any person having possession or control of household goods  
23 or personal effects, who knows, or through the exercise of  
24 reasonable care should know, that the household goods carrier has  
25 been tendered the amount specified in subdivision (b), shall release  
26 the household goods and personal effects to the consignor or  
27 consignee, upon the request of the consignor or consignee. If the  
28 person fails to release the household goods and personal effects  
29 to the consignor or consignee, any peace officer, as defined in  
30 subdivision (c) of Section 5133, may take custody of the household  
31 goods and personal effects and release them to the consignor or  
32 consignee.

33 ~~(g) Nothing in this section affects~~ *This section shall not affect*  
34 any rights, if any, of a household goods carrier to claim additional  
35 amounts, on an unsecured basis, or of a consignor or consignee to  
36 make or contest any claim, and tender of payment of the amount  
37 specified in subdivision (b) is not a waiver of claims by the  
38 consignor or consignee.

39 (h) Any person injured by a violation of this section may bring  
40 an action for the recovery of the greater of one thousand dollars

1 (\$1,000) or actual damages, injunctive or other equitable relief,  
2 reasonable attorney's fees and costs, and exemplary damages of  
3 not less than three times the amount of actual damages for a willful  
4 violation.

5 (i) Any waiver of this section shall be void and unenforceable.

6 (j) Notwithstanding any other law, this section exclusively  
7 establishes and provides for a household goods carrier's lien on  
8 used household goods and personal effects to secure payment for  
9 transportation and additional services ordered by the consignor.

10 (k) For purposes of this section, the following terms have the  
11 following meaning:

12 (1) "Consignor" means the person named in the bill of lading  
13 as the person from whom the household goods and personal effects  
14 have been received for shipment and that person's agent.

15 (2) "Consignee" means the person named in the bill of lading  
16 to whom or to whose order the household goods carrier is required  
17 to make delivery as provided in the bill of lading and that person's  
18 agent.

19 *(l) Any document required by this section may be in an*  
20 *electronic form, if agreed upon by the carrier and the customer.*

21 *SEC. 6. Section 5143 of the Public Utilities Code is amended*  
22 *to read:*

23 5143. (a) For purposes of this section, the following terms  
24 have the following meaning:

25 (1) "Consignor" means the person named in the bill of lading  
26 as the person from whom the household goods and personal effects  
27 have been received for shipment and that person's agent.

28 (2) "Consignee" means the person named in the bill of lading  
29 to whom or to whose order the household goods carrier is required  
30 to make delivery as provided in the bill of lading and that person's  
31 agent.

32 (b) Any household goods carrier engaged in the business of  
33 transportation of used household goods and personal effects by  
34 motor vehicle over any public highway in this state shall provide  
35 each consignor with a completed copy of the notice set forth in  
36 this section. The notice shall be printed in at least 12-point type,  
37 except the title and first two paragraphs which shall be printed in  
38 boldface type, and provided to each consignor at least three days  
39 prior to the date scheduled for the transportation of household  
40 goods or personal effects. If the consignor requests services on a



1 date that is less than three days before the scheduled date for  
2 transportation of the household goods or personal effects, the  
3 carrier shall provide the notice as soon as practicable, but in no  
4 event may the carrier commence any services until the consignor  
5 has signed and received a signed copy of the notice. The carrier  
6 shall obtain sufficient information from the consignor to fill out  
7 the form and shall include the correct maximum amount and a  
8 sufficient description of services that will be performed. The carrier  
9 shall retain a copy of the notice, signed by the cosignor, for at least  
10 three years from the date the notice was signed by the cosignor.

11 (c) Any waiver of the requirements of this section is void and  
12 unenforceable.

13 (d) The “Not To Exceed” amount set forth in the notice and the  
14 agreement between the household goods carrier and the consignor  
15 shall be the maximum total dollar amount for which the consignor  
16 may be liable for the transportation of household goods and  
17 personal effects and any additional services ordered by the  
18 consignor (including any bona fide change order permitted under  
19 the commission’s rules and tariffs) and agreed to by the consignor  
20 before any goods or personal effects are moved from their location  
21 or any other services are performed.

22 (e) A household goods carrier may provide the notice set forth  
23 in this section either as a separate document or by including it as  
24 the centerfold of the informational booklet that the household  
25 goods carrier is required to provide the consignor under the  
26 commission’s tariffs. If the household goods carrier provides the  
27 notice as part of the informational booklet, the booklet shall contain  
28 a tab that extends beyond the edge of the booklet at the place where  
29 the notice is included. The statement “Important Notice” shall be  
30 printed on the tab in at least 12-point boldface type. In addition,  
31 the statement “Customer Must Read And Sign The Important  
32 Notice In The Middle Of This Booklet Before A Move Can Begin”  
33 shall be set forth in 14-point boldface type on the front cover of  
34 the booklet.

35 (f) The notice provided the consignor shall be in the following  
36 form:

1 “IMPORTANT NOTICE ABOUT YOUR MOVE

2  
3 “IT IS VERY IMPORTANT THAT YOU ONLY AGREE TO A  
4 “NOT TO EXCEED” AMOUNT THAT YOU THINK IS A  
5 PROPER AND REASONABLE FEE FOR THE SERVICES YOU  
6 ARE REQUESTING. THE “NOT TO EXCEED” AMOUNT THIS  
7 MOVER IS REQUESTING IS \$\_\_\_\_\_ to  
8 perform the following services:

9 \_\_\_\_\_  
10 \_\_\_\_\_  
11 \_\_\_\_\_.

12  
13 “IF YOU DO NOT AGREE TO THE “NOT TO EXCEED”  
14 AMOUNT LISTED OR THE DESCRIPTION OF SERVICES,  
15 YOU HAVE THE RIGHT TO REFUSE THE MOVER’S  
16 SERVICE AT NO CHARGE TO YOU.

17 “If you request additional or different services at the time of the  
18 move, you may be asked to complete a Change Order which will  
19 set forth your agreement to pay for additional fees for those newly  
20 requested services. If you agree to the additional charges on that  
21 Change Order, those charges may be added to the “NOT TO  
22 EXCEED” amount set forth above. If you do not agree to the  
23 amounts listed in the Change Order, you should not sign it and  
24 may refuse the mover’s services.

25 “A mover cannot refuse to release your goods once you have paid  
26 the “NOT TO EXCEED” amount for the transportation of your  
27 goods and personal effects and any additional services that you  
28 have agreed to in writing. The “NOT TO EXCEED” amount must  
29 be reasonable.

30 “A mover cannot, under any circumstances, withhold food,  
31 medicine, medical devices, items to treat or assist a disabled person,  
32 or items used for care of a minor child. An unlicensed mover has  
33 no right to withhold your goods for any reason including claims  
34 that you have not adequately paid for services rendered.

35 “For additional information or to confirm whether a mover is  
36 licensed by the California Public Utilities Commission, please call  
37 the Public Utilities Commission toll free at:

38 \_\_\_\_\_  
39 \_\_\_\_\_.

insert toll-free number

“I have completed this form and provided the consumer (shipper) with a copy of this notice.

“Signed \_\_\_\_\_

Dated \_\_\_\_\_

“I have been provided with a copy of this form.

Signed \_\_\_\_\_ Dated \_\_\_\_\_

\_\_\_\_\_”

*(g) Any document required by this section may be in an electronic form, if agreed upon by the carrier and the customer.*

~~SEC. 5.~~

*SEC. 7.* Section 5144 is added to the Public Utilities Code, to read:

5144. Every household goods carrier shall add a prominent link to the household goods carrier’s home Internet Web site, if the household goods carrier operates, posts to, or uses an Internet Web site, that immediately directs all consumers to the commission’s Internet Web site on moving companies and household goods carriers that promotes consumer rights and protection.

~~SEC. 6.~~

*SEC. 8.* Section 5311 of the Public Utilities Code is amended to read:

5311. (a) Every household goods carrier and every officer, director, agent, or employee of any household goods carrier who violates or who fails to comply with, or who procures, aids, or abets any violation by any household goods carrier of any provision of this chapter, or who fails to obey, observe, or comply with any order, decision, rule, regulation, direction, demand, or requirement of the commission, or of any operating permit issued to any household goods carrier, or who procures, aids, or abets any household goods carrier in its failure to obey, observe, or comply with any such order, decision, rule, regulation, direction, demand, requirement, or operating permit, is guilty of a misdemeanor, and is punishable by a fine of not more than two thousand five hundred dollars (\$2,500) or by imprisonment in the county jail for not more than three months, or both. If a violation is willful, each willful

1 violation is punishable by a fine of not more than ten thousand  
2 dollars (\$10,000) or by imprisonment in the county jail for not  
3 more than one year, or both. If the violation involves operating or  
4 holding one's self out as a household goods carrier without a  
5 permit, the fine shall be not less than one thousand dollars (\$1,000).

6 (b) Any person who violates subdivision (a) of Section 5133,  
7 is guilty of a misdemeanor, and is punishable by a fine of not more  
8 than ten thousand dollars (\$10,000), by imprisonment in the county  
9 jail for not more than one year, or both, for each violation.

10 ~~SEC. 7.~~

11 *SEC. 9.* Section 5314.5 of the Public Utilities Code is amended  
12 to read:

13 5314.5. Every corporation or person who knowingly and  
14 willfully issues, publishes, or affixes, or causes or permits the  
15 issuance, publishing, or affixing, of any oral or written  
16 advertisement, broadcast, or other holding out to the public, or any  
17 portion thereof, that the corporation or person is in operation as a  
18 household goods carrier without having a valid permit issued under  
19 this chapter is guilty of a misdemeanor punishable by a fine of not  
20 more than two thousand five hundred dollars (\$2,500).

21 ~~SEC. 8.~~

22 *SEC. 10.* Section 5314.7 is added to the Public Utilities Code,  
23 to read:

24 ~~5314.7. Any household goods carrier's unauthorized,~~  
25 ~~unlicensed, or otherwise unlawful infringement of another~~  
26 ~~corporation's or person's trademark, service mark, collective mark,~~  
27 ~~certification mark, or trade name that has been registered with the~~  
28 ~~Secretary of State or the United States Patent and Trademark Office~~  
29 ~~is subject to having its permit suspended or revoked and may be~~  
30 ~~assessed a fine not to exceed two thousand five hundred dollars~~  
31 ~~(\$2,500). In addition, the commission may assess an amount~~  
32 ~~sufficient to cover the reasonable expense of investigation incurred~~  
33 ~~by the commission to verify the infringement. Fines shall be issued~~  
34 ~~only for acts of infringement that are reasonably related to the~~  
35 ~~household goods moving business.~~

36 *5314.7. Every household goods carrier that falsifies permit*  
37 *status, membership in an association, or location is subject to a*  
38 *penalty of not more than two thousand five hundred dollars*  
39 *(\$2,500) per day that the carrier is in violation of this section.*

1     ~~SEC. 9.~~

2     ~~SEC. 11.~~ Section 5315 of the Public Utilities Code is amended  
3 to read:

4     5315. Every violation of the provisions of this chapter or of  
5 any order, decision, decree, rule, direction, demand, or requirement  
6 of the commission by any household goods carrier, any corporation,  
7 or any person is a separate and distinct offense, and in case of a  
8 continuing violation each day's continuance thereof is a separate  
9 and distinct offense.

10    ~~SEC. 10.~~

11    ~~SEC. 12.~~ Section 5322 of the Public Utilities Code is amended  
12 to read:

13    5322. (a) The Legislature finds and declares that advertisement  
14 and use of telephone service are essential for household goods  
15 carriers to obtain business and conduct intrastate moving services.  
16 The unlawful advertisement by ~~unlicensed~~ *unpermitted* household  
17 goods carriers has required properly ~~licensed~~ *permitted* and  
18 regulated household goods carriers to compete with ~~unlicensed~~  
19 *unpermitted* household goods carriers using unfair business  
20 practices. ~~Unlicensed~~ *Unpermitted* household goods carriers have  
21 also exposed citizens of the State of California to unscrupulous  
22 persons who portray themselves as properly ~~licensed~~ *permitted*,  
23 qualified, and insured household goods carriers. Many of these  
24 ~~unlicensed~~ *unpermitted* household goods carriers have been found  
25 to have perpetrated acts of theft, fraud, and dishonesty upon  
26 unsuspecting citizens of the State of California.

27    (b) (1) The Legislature finds and declares that the termination  
28 of telephone service utilized by ~~unlicensed~~ *unpermitted* household  
29 goods carriers is essential to ensure the public safety and welfare.  
30 Therefore, the commission should take enforcement action as  
31 specified in this section to disconnect telephone service of  
32 ~~unlicensed~~ *unpermitted* household goods carriers who unlawfully  
33 advertise moving services in yellow page directories and other  
34 publications. The enforcement action provided for by this section  
35 is consistent with the decision of the Supreme Court of the State  
36 of California in *Goldin, et al. v. Public Utilities Commission et*  
37 *al.*, (1979) 23 Cal.3d 638.

38    (2) Notwithstanding Section 2891, for purposes of this section,  
39 a telephone utility, or a corporation that holds a controlling interest  
40 in the telephone utility, or any business that is a subsidiary or

1 affiliate of the telephone utility, that has the name and address of  
2 the subscriber to a telephone number being used by an ~~unlicensed~~  
3 *unpermitted* household goods carrier shall provide the commission,  
4 or an authorized official of the commission, upon demand, and the  
5 order of a magistrate, access to this information. A magistrate may  
6 only issue an order, for the purposes of this subdivision, when the  
7 magistrate has made the findings required by subdivision (c).

8 (c) Any telephone utility operating under the jurisdiction of the  
9 commission shall refuse telephone service to a new customer and  
10 shall disconnect telephone service of an existing customer only  
11 after it is shown that other available enforcement remedies of the  
12 commission have failed to terminate unlawful activities detrimental  
13 to the public welfare and safety, and upon receipt from any  
14 authorized official of the commission of a writing, signed by a  
15 magistrate, as defined by Sections 807 and 808 of the Penal Code,  
16 finding that probable cause exists to believe that the customer is  
17 advertising or holding out to the public to perform, or is  
18 performing, household goods carrier services without having in  
19 force a permit issued by the commission authorizing those services,  
20 or that the telephone service otherwise is being used or is to be  
21 used as an instrumentality, directly or indirectly, to violate or to  
22 assist in violation of the laws requiring a household goods carrier  
23 permit. Included in the writing of the magistrate shall be a finding  
24 that there is probable cause to believe that the subject telephone  
25 facilities have been or are to be used in the commission or  
26 facilitation of holding out to the public to perform, or in  
27 performing, household goods carrier services without having in  
28 force a permit issued by the commission authorizing those services,  
29 and that, absent immediate and summary action, a danger to public  
30 welfare or safety will result.

31 (d) Any person aggrieved by any action taken pursuant to this  
32 section shall have the right to file a complaint with the commission  
33 and may include therein a request for interim relief. The  
34 commission shall schedule a public hearing on the complaint to  
35 be held within 21 calendar days of the filing and assignment of a  
36 docket number to the complaint. The remedy provided by this  
37 section shall be exclusive. No other action at law or in equity shall  
38 accrue against any telephone utility because of, or as a result of,  
39 any matter or thing done or threatened to be done pursuant to this  
40 section.

1 (e) At any hearing on complaint pursuant to subdivision (d), the  
2 commission staff shall have the right to participate, including the  
3 right to present evidence and argument and to present and  
4 cross-examine witnesses. The commission staff shall have both  
5 the burden of providing that the use made or to be made of the  
6 telephone service is to hold out to the public to perform, or to assist  
7 in performing, services as a household goods carrier, or that the  
8 telephone service is being or is to be used as an instrumentality,  
9 directly or indirectly, to violate or to assist in violation of the  
10 licensing laws as applicable to household goods carriers and that  
11 the character of the acts is such that, absent immediate and  
12 summary action, a danger to public welfare or safety will result,  
13 and the burden of persuading the commission that the telephone  
14 services should be refused or should not be restored.

15 (f) The telephone utility, immediately upon refusal or  
16 disconnection of service in accordance with subdivision (c), shall  
17 notify the customer or subscriber in writing that the refusal or  
18 disconnection of telephone service has been made pursuant to a  
19 request of the commission and the writing of a magistrate, and  
20 shall include with the notice a copy of this section, a copy of the  
21 writing of the magistrate, and a statement that the customer or  
22 subscriber may request information from the commission at its  
23 San Francisco or Los Angeles office concerning any provision of  
24 this section and the manner in which a complaint may be filed.

25 (g) Each contract for telephone service, by operation of law,  
26 shall be deemed to contain the provisions of this section. The  
27 provisions shall be deemed to be a part of any application for  
28 telephone service. Applicants and customers for telephone service  
29 shall be deemed to have consented to the provisions of this section  
30 as a consideration for the furnishing of the service.

31 (h) The terms “person,” “customer,” and “subscriber,” as used  
32 in this section, include a subscriber to telephone service, an  
33 applicant for that service, a corporation, a company, a partnership,  
34 an association, and an individual.

35 (i) The term “telephone utility,” as used in this section, includes  
36 a “telephone corporation” and a “telegraph corporation,” as defined  
37 in Division 1 (commencing with Section 201).

38 (j) The term “authorized official,” as used in this section,  
39 includes the Executive Director of the Public Utilities Commission

1 or any commission employee designated pursuant to paragraph  
2 (5) of subdivision (a) of Section 830.11 of the Penal Code.  
3 ~~SEC. 11.~~  
4 *SEC. 13.* No reimbursement is required by this act pursuant to  
5 Section 6 of Article XIII B of the California Constitution because  
6 the only costs that may be incurred by a local agency or school  
7 district will be incurred because this act creates a new crime or  
8 infraction, eliminates a crime or infraction, or changes the penalty  
9 for a crime or infraction, within the meaning of Section 17556 of  
10 the Government Code, or changes the definition of a crime within  
11 the meaning of Section 6 of Article XIII B of the California  
12 Constitution.